IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WA.No. 1482 of 1998(D)

AGAINST THE JUDGEMENT IN OP.19888/1996 Dated 02/03/1998
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APPELLANTS/RESPONDENTS:
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1. THE STATE OF KERALA,
   REPRESENTED BY THE CHIEF SECRETARY
   TO GOVERNMENT SECRETARIAT,
   THIRUVANANTHAPURAM.

2. THE REGISTERING AUTHORITY,
   KOTTAYAM
   (REGIONAL TRANSPORT OFFICER, KOTTAYAM).

3. THE SALES TAX OFFICER,
   ETTUMANOOR.

BY SR.GOVERNMENT PLEADER MR.MUHAMMED RAFIQ

RESPONDENT/PETITIONER:

K.K.FRANCIS,
AGED 40 YEARS,
S/O.OUSEPH KURIAN,
KUZHIYAPARAMBIL HOUSE,
THALLAKOM P.O.,
KOTTAYAM (DIST.).

BY ADV. SRI.C.C.THOMAS

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01/12/2007, ALONG WITH WA NO. 1484 OF 1998 WA NO. 1485 OF 1998 WA NO. 1487 OF 1998 & WA NO. 1489 OF 1998 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

W.A.Nos.1482, 1484, 1485, 1487 & 1489 of 1998

Dated, this the 1st day of December, 2007

JUDGMENT

H.L.Dattu, C.J.

The Revenue being aggrieved by the orders passed by the learned Single Judge in O.P.No.19888 of 1996 and connected matters disposed of on 2nd March, 1998 is before us in these writ appeals.

2. The issue raised in these writ appeals is no more res integra in view of the decision of a Division Bench of this Court in the case of *Thressiamma L.Chirayil* v. *State of Kerala* (2007 (1) KLT 303). In the said decision the Division Bench of this Court has observed as under:

> "A compensatory tax is levied on an individual as a member of a class and a fee is levied on an individual as such. The concept of compensatory tax is a judicially evolved principle and could be an exception to the provisions of Art.301. In the case of a tax there is no identification of a specific benefit and even if such identification is there it is not capable of direct measurement. A tax is a payment where the special benefit, if any, is converted into common burden. On the other hand, a fee is based on the "principle of equivalence". In the case of a fee or compensatory tax, the "principle of equivalence" applies and the basis of a fee or a compensatory tax is the same. The main basis a fee or a tax, even if there is any benefit, the same is incidental to the government action and even if such benefit results from the government action, the same is not measurable. Fee or a compensatory tax has to be broadly proportional and not progressive. Levy of entry tax on goods imported from other State to the State of Kerala and from abroad is not compensatory in nature since the State Government could

not discharge its burden by placing materials before Court that payment of levy of entry tax is reimbursement/recompense for the quantifiable/measurable benefit provided or to be provided. Demand and collection of entry tax under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 is illegal, unauthorized and violative of Art.301 of the Constitution of India."

3. Respectfully following the observations made in the aforesaid decision, these writ appeals are rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

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